Filed 5/14/19 HST Investments, LP v. Nationstar Mortgage LLC CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HST INVESTMENTS, LP, Plaintiff and Appellant, v. NATIONSTAR MORTGAGE LLC et al., Defendants and Respondents.	G055382 (Super. Ct. No. 30-2015-00810507) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Wendel, Rosen, Black & Dean, Charles A. Hansen, Kevin R. Brodehl; Patton Sullivan Brodehl and Kevin R. Brodehl for Plaintiff and Appellant.

Severson & Werson and Jan T. Chilton for Defendants and Respondents.

* * *

This case arises out of a mistake, which the trial court addressed a decade ago to the apparent satisfaction of no one. Rather than appeal from that 2009 judgment, years later HST Investment, LP (HST) filed this second lawsuit alleging that provisions of the prior judgment were void, and thus that it was entitled to additional relief as a consequence of those void provisions.

The initial mistake was made by former property owners who incorrectly believed their 5.5 acre residential parcel in Laguna Beach could be legally divided. As a result of their mistaken belief, they sold a 3.3 acre fragment of that parcel to HST in violation of the city's Subdivision Map Act (Gov. Code, § 66410 et seq. (the Map Act)), while retaining the 2.2 acre fragment that included their home. They then took out a mortgage on the home, which resulted in the recording of a deed of trust against the entire 5.5 acre parcel, including the fragment owned by HST.

Litigation ensued, resulting in the 2009 judgment that (1) awarded HST significant damages against the original property owners; (2) awarded the lender attorney fees against the original property owners; and (3) "reformed" the lender's deed of trust so that it was "removed from and has no legal or equitable effect upon" HST's fragment of the parcel, and instead encumbered only the 2.2 acre fragment retained by the original property owners. That judgment also declared the lender's lien to be valid and granted its request for a judicial foreclosure of the 2.2 acre fragment—which allowed ownership of the fragment to "revert" to the lender following a writ of sale, but prohibited any sale of the fragment to any third party unless it was either legally subdivided or sold together and concurrently with HST's fragment.

HST did not appeal any aspect of the 2009 judgment. Instead, in 2011, it purchased the 2.2 acre fragment out of the original owners' bankruptcy for $25,000, with the lender's lien intact, thereby reuniting the two illegally divided fragments. HST's apparent intent at that time was to negotiate some compromise resolution of the lien

amount with the lender. However, the parties were unable to reach an agreement to satisfy the lender's lien, and it therefore remained in place.

The lender's successor in interest, Nationstar,[1] subsequently filed a notice of default against the entire property (rather than just the 2.2 acre fragment), and HST sued for damages based on theories of slander of title and unfair business practices. HST also sought a declaration quieting title to the reunited property against the reformed deed of trust, arguing that the provisions of the 2009 judgment reforming the deed of trust were void and unenforceable because they violated the Map Act, and that the reformed deed of trust itself was likewise void and unenforceable.

The trial court rejected HST's claims, instead declaring that HST's purchase of the 2.2 acre fragment had reunified the legal parcel and rendered it in compliance with the Map Act. As a consequence, the 2009 judgment was amended to reflect the reformed deed of trust which now encumbered the entire 5.5 acre parcel.

On appeal, HST argues again that the provisions of the 2009 judgment that reformed the deed of trust are void and illegal, and thus the reformed deed of trust is unenforceable and invalid. It also argues the present judgment should be reversed because it impermissibly creates an "expanded, nonconsensual lien in direct conflict with the parties' intent, as determined in the 2009 judgment." We disagree with both contentions.

If the 2009 judgment were void, as HST contends, the remedy would be to vacate those provisions (or perhaps the entire 2009 judgment). Vacating those provisions would reinstate the original terms of the deed of trust, so it would again be applicable to

[1] Respondents are (1) U.S. Bank National Association, which is the Custodian for and Trustee of the trust that currently owns the debt secured by the reformed deed of trust, and (2) Nationstar Mortgage LLC, which is the loan servicer. We refer to them collectively as "Nationstar."

the entire 5.5 acre property—which is consistent with the declaratory judgment entered in this case.

HST's second argument fails because it does not acknowledge the impact of its own decision to purchase the 2.2 acre fragment, and thus reunify the property in the wake of the 2009 judgment. The trial court's declaration that the lien applied to the entire property recognized that the property had been reunified by HST's purchase. For the court to have ruled otherwise—treating the fragments as if they remained illegally divided under separate ownership—would have perpetuated the very Map Act violation that serves as the basis for HST's complaint.

We also find no error in the trial court's disposition of HST's claims for slander of title and unfair business practices. The court found, as a matter of law, that Nationstar's act of recording the notice of default was not done with reckless disregard of HST's rights; the recording was therefore protected by qualified privilege. We reject HST's attempt to equate Nationstar's constructive notice of the 2009 judgment with actual knowledge of its provisions when assessing whether Nationstar acted recklessly. Finally, HST's claim of unfair business practices fails because there is no evidence Nationstar acted either unfairly or unlawfully.

FACTS

HST filed its verified complaint against Nationstar in September 2015, alleging causes of action based on theories of quiet title, declaratory relief, slander of title and statutory penalties triggered by Nationstar's alleged failure to comply with requirements applicable to mortgagees. In its verified first amended complaint (FAC), HST added a cause of action alleging violation of the Unfair Business Practices Act (Bus. & Prof. Code, § 17200 et seq.)

In the FAC, HST summarized the prior history of litigation involving the fragmented 5.5 acre parcel, including that the litigation had culminated in a judgment

confirming that the deed of trust securing a loan taken out by the prior owners had improperly and unintentionally encumbered the 3.3 acre fragment owned by HST, and reforming the deed of trust to encumber only the 2.2 acre fragment retained by the original owners.

HST alleges that because the 2.2 acre fragment encumbered only "a raw geometric description of land that is not a legal parcel," the Map Act "prevented *any* sale of the encumbered land." Nonetheless, in 2011, HST itself purchased the 2.2 acre fragment out of the original owners' bankruptcy proceeding, "subject to secured liens on the 2.2 Acre Portion" and thus allegedly "cure[d] the 'ownership' element of the Subdivision Map Act problem" by reunifying the divided property. HST further alleges that as a consequence of that purchase, "[f]ee ownership of the Property is now re-unified and the unlawfully 'broken' Property has been restored and put together under HST's sole ownership by the Bankruptcy Court."

HST then alleges "The only remaining obstacle now preventing the final resolution of the multi-party nightmare Subdivision Map Act scenario created by the [original owners], and untangling this entire mess, is [Nationstar's] lingering . . . 'reformed' Deed of Trust on the unsellable 2.2 geometric description of a portion of the Property that, contrary to the express terms of the Judgment, continues to cloud title to the 3.3 Acre Portion and create an unconscionable, unreasonable and unlawful restraint on alienation on the entire Property."

HST then concludes that Nationstar's "unreasonable and prejudicial delay in taking any action on the 2009 Judgment . . . violates the clear and direct provisions of the Judgment to the effect that [Nationstar and its predecessors'] unlawful Deed of Trust is not to affect [HST's] 3.3 Acre Portion which was never encumbered" and that "the equities favor [cancelling the deed of trust] because [HST] does not owe and has never owed any debt or obligation to [Nationstar and its predecessors] . . . and "is not and never

was in a borrower-lender, debtor-creditor or, for that matter, even a contractual relationship with Defendants."

Based on those alleged facts and legal contentions, HST sought a declaration of the parties' "rights, duties, and obligations under the [2009] Judgment and Reformed Deed of Trust," and claimed that "[a]bsent equitable and legal relief from the Court, HST will not be able to ever sell, transfer, or encumber the Property, thereby jeopardizing all the benefits HST expects to receive from the Judgment and from its initial purchase of the 3.3 Acre Portion, and subsequent purchase of the remaining 2.2 Acre Portion, including their respective sales prices. Moreover, the entire Property will remain in an indefinite unconscionable state of legal limbo."

HST also alleged that in 2014 (i.e., two years after HST reunited the two fragments), Nationstar committed a distinct and separate slander of its title to the 3.3 acre fragment when it recorded a notice of default against the "title to the entire Property—including HST's unencumbered 3.3 Acres—with the Orange County Recorder's office . . . ."

The trial court granted Nationstar's motion for summary adjudication of HST's causes of action for slander of title and unfair business practices. In that ruling, the court also found that HST lacked standing to void the reformed deed of trust and that Nationstar's "interest in the 2.2 acres [was] valid." The court denied summary adjudication of HST's causes of action for quiet title and declaratory relief, reasoning that even when the court concludes a plaintiff is not entitled to the specific declaration of rights it is seeking, the court should nonetheless issue a judgment declaring what the parties' rights are.

The parties then proceeded to trial on HST's causes of action for declaratory relief and quiet title. The parties stipulated that Nationstar is the proper defendant with an interest in the loan and reformed deed of trust, and that "[t]he reformed deed of trust . . . remains an encumbrance on title to the affected 2.2 acre portion of the

property (as described in the 2009 Judgment), as the lien has not been satisfied." The parties also stipulated that HST holds title to the entire 5.5 acre legal parcel and that the property has never been legally subdivided.

At the conclusion of the trial, the court issued a minute order declaring that, since HST purchased the 2.2 acre property fragment "with full knowledge of the encumbrance, the controversy surrounding the property, and the strictures of the Subdivision Map Act, . . . the entire 5.5 acre parcel is now unitary and in compliance with the SMA. The . . . reformed deed of trust . . . now covers the entire 5.5 acre property." The court ruled that "the reformed deed of trust is enforceable," and declared that "[t]he remainder of the 2009 judgment remains in full force and effect."

DISCUSSION

1. *The Map Act*

"'As now codified in the Government Code [sections 66410, et seq.], the Subdivision Map Act constitutes the major land use permit control vehicle for urban planning and environmental protection.'" (*van't Rood v. City of Santa Clara* (2003) 113 Cal.App.4th 549, 564.) "The Act has three principal goals: '[T]o encourage orderly community development, to prevent undue burdens on the public, and to protect individual real estate buyers. [Citations.] Thus, the Act serves "to coordinate planning with the community pattern laid out by local authorities and to assure proper improvements are made so the area does not become an undue burden on the taxpayer [citation]." [Citations.]'" (*Kalway v. City of Berkeley* (2007) 151 Cal.App.4th 827, 833 (*Kalway*).)

"[C]ompliance with the Subdivision Map Act is a necessary predicate to the sale of lands within its ambit" (*van't Rood v. City of Santa Clara*, *supra*, 113 Cal.App.4th at p. 565), and to comply, "the landowner must secure local approval and record an appropriate map (*Id.* at p. 564.)

The Map Act states that "[n]o person shall sell, lease, or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon," for which a final map or parcel map is required by this division or local ordinance, until a fully compliant final map or parcel map "has been filed for record by the recorder of the county in which any portion of the subdivision is located." (Gov. Code, § 66499.30, subds. (a), (b).)

The Map Act "protect[s] both public and purchaser" (*Kalway, supra*, 151 Cal.App.4th at p. 833), and it is a crime to violate its provisions (Gov. Code, § 66499.31); however, the Map Act does not automatically invalidate transactions which violate its rules. Instead, section 66499.32, subdivision (a), specifies that in addition to other available remedies, "[a]ny deed of conveyance, sale or contract to sell real property which has been divided, or which has resulted from a division, in violation of the provisions of this division . . . *is voidable* at the sole option of the grantee, buyer or person contracting to purchase . . . *within one year* after the date of discovery of the violation . . . ," but is otherwise binding on the grantee's successors in interest, and on the grantor, vendor, or his assignee, heir or devisee.[2] (Gov. Code, § 66499.32, subd. (a), italics added.)

Although the grantee of an illegally divided fragment of property can elect to keep the fragment rather than void the transaction—as HST did in this case[3]—that does nothing to cure the Map Act violation, and the grantee cannot thereafter sell, finance or develop the illegal fragment unless it is brought into compliance with the Act. (Gov.

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[2] The grantee has one year from the date of discovery to "bring an action in the superior court to recover any damages he has suffered by reason of such division of property." (Gov. Code, § 66499.32, subd. (b).)

[3] The 2009 judgment awarded HST the entire $395,000 it paid for the 3.3 acre fragment, plus interest, as part of its out-of-pocket damage award against the original owners, while also allowing HST to retain ownership of that fragment.

Code, § 66499.30; *Kalway, supra* 151 Cal.App.4th at p. 837 ["Mrs. Kalway, of course, has no right to further transfer title to the illegally created Mosswood Road Parcel except back to Mr. Kalway"].)

With those principles in mind, we turn to HST's contentions.

2. *Voidness of 2009 Judgment*

HST's primary contention on appeal is that the provisions of the 2009 judgment that reformed Nationstar's deed of trust—restricting it to only the 2.2 acre fragment of the 5.5 acre legal parcel—are void, and as a result the reformed deed of trust itself is unenforceable. As HST explains it, "those provisions from the 2009 Judgment are illegal on their face and void *ab initio*, not merely voidable at one party's election." We disagree.

HST contends the trial court erred by concluding HST lacked standing to assert that the reformed deed of trust was voided by the Map Act. We are unconvinced. According to HST, Government Code section 66499.32, subdivision (a)—the provision cited by both the court and Nationstar to support the proposition that only a "grantee, buyer or person contracting to purchase" an illegally divided property has the option to void the transaction—applies only to the sale of a property fragment, not to its "financing." HST contends that because the 2009 judgment's reformation of the deed of trust, restricting its encumbrance to the fragment retained by the original owners, constitutes a "financing" rather than a sale of the fragment, Government Code section 66499.32 cannot be relied upon to deny it standing to challenge that illegal financing.

HST does not explain why the reformation of the existing deed of trust in the 2009 judgment would qualify as an illegal "financing" of that fragment, and thus why that reformation, in and of itself, would violate the Map Act. The "financing" of the 2.2 acre fragment occurred when the loan was made to the original owners. The subsequent reformation of the deed of trust simply corrected the encumbrance of the

second fragment.[4] Indeed, HST itself appears to view the reformation that way when it argues in another section of its brief that the "provisions of the 2009 Judgment barring [Nationstar's] encumbrance of the 3.3 [a]cre [f]ragment" are "valid" provisions of the judgment which cannot be altered. There is no legal distinction to be drawn between the judgment's provisions "barring" the encumbrance of the 3.3 acre fragment, and its provision reforming the deed of trust to encumber only the 2.2 acre fragment. Those are the offsetting effects of the same judgment provisions, which, according to HST, are valid.

The only potential future Map Act violation authorized by the 2009 judgment would be the proposed writ of sale that would have allowed ownership of the 2.2 acre fragment to revert to the lender. Such a reversion may qualify, at least technically, as an illegal "sale" of the fragment—and thus as a Map Act violation—because it would transfer ownership of the illegal fragment to the lender in exchange for canceling the obligation it secures. But even if the reversion qualified as an illegal "sale" of the fragment, it would be the lender, as grantee, that would have the sole right to claim the sale transaction is void under Government Code section 66499.32, subdivision (a). HST would have no standing to contest it, just as the trial court ruled. HST has demonstrated no error in the court's determination that it lacks standing to claim that the provisions of the 2009 judgment affecting the reformed deed of trust are void because they violate the Map Act.

Even if HST had standing, we would reject its contention on the merits. Assuming the 2009 judgment countenanced a violation of the Map Act, we would

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[4] Ironically, while the original deed of trust created obvious problems by encumbering the fragment of property that had already been sold to HST, it would apparently not qualify as a Map Act violation because it applied to the entire legal parcel. HST does not claim otherwise. Rather, its challenge is limited solely to the provisions of the 2009 judgment that reformed the deed of trust and approved its foreclosure.

conclude that rendered the judgment voidable, rather than void. "'The distinction between void and voidable orders is frequently framed in terms of the court's jurisdiction. "Essentially, jurisdictional errors are of two types. 'Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.' [Citation.] When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and 'thus vulnerable to direct or collateral attack at any time.'"'" (*Talley v. Valuation Counselors Group, Inc.* (2010) 191 Cal.App.4th 132, 149.)

By contrast, "[o]nce a court has established its power to hear a case, it may make errors with respect to areas of procedure, pleading, evidence, and substantive law." (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56.) In such cases, the court "merely act[s] in excess of its jurisdiction or defined power, [which] render[s] the judgment voidable." (*Ibid.*) HST's attack on the 2009 judgment makes only the latter claim.

In essence, HST is arguing the court could not lawfully enter a judgment that either incorporates or authorizes a violation of the Map Act or other statutory provision. That may be true, but such an error would not undermine the court's fundamental jurisdiction. Courts sometimes make legal errors, which is why our legal system provides for appeals. "The difference between a void judgment and a voidable one is that a party seeking to set aside a voidable judgment or order must act to set aside the order or judgment before the matter becomes final." (*Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 780; See *Lee v. An* (2008) 168 Cal.App.4th 558, 565-566.) In the absence of a timely appeal, the potentially voidable judgment becomes final and fully enforceable. That is the case here.

At oral argument, HST's counsel contended that HST did not appeal from the 2009 judgment, because it could not, since it was not a party "aggrieved" by the judgment. We disagree since the 2009 judgment had a dramatic potential impact on any

desire HST may have harbored at that time concerning future development of the property.

HST relies on *Selma Auto Mall II v. Appellate Department* (1996) 44 Cal.App.4th 1672, 1683 (*Selma*), for the proposition that "[p]roceedings outside the authority of the court, *or in contravention of statutory prohibitions*, are, whether the court has jurisdiction of the parties and subject matter of the action or not, 'utterly void.'" (Italics added.) That statement in *Selma* is a quote from a Minnesota case, as reflected in *Michel v. Williams* (1936) 13 Cal.App.2d 198, 200; it is not clear what the phrase "proceedings . . . in contravention of statutory prohibitions" refers to, or how it relates to California law. HST fails to explain its potential application here.

The trial court that entered the 2009 judgment was presented with a situation in which a Map Act violation had already occurred, and the court was being asked to address the consequences of that violation and to ameliorate its effects on both the innocent purchaser of one illegal fragment and the innocent lender on the other. The reformation of the lender's deed of trust to achieve those goals fell squarely within the court's jurisdiction. If, as HST contends, the reformation devised by the court was not consistent with the Map Act, that error would have made the judgment voidable, not void, and it was incumbent on one of the parties aggrieved by that inconsistency—one of which was HST—to file an appeal challenging the error. When HST failed to do so, the 2009 judgment became final and enforceable.

3. *The Effect of Voiding the 2009 Judgment*

Even if the provisions of the 2009 judgment that reformed the deed of trust were declared void that would not lead to the result HST now seeks. HST theorizes that if the 2009 judgment's reformation of the deed of trust were void, then the reformed deed of trust created by that judgment would be unenforceable, and thus the lien created by the reformed deed of trust would be extinguished. Not so.

A determination that a judgment is void would, in effect, roll back the parties' status to 2009; in other words, it would reinstate the parties' rights as they existed before the 2009 judgment was entered. "'A void judgment is, in legal effect, no judgment. . . . From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one.'" (*Bennett v. Wilson* (1898) 122 Cal. 509, 513-514.) A void judgment is "'a nullity—past, present and future.'" (*OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1331.)

Here, if the 2009 judgment's reformation of the deed of trust were declared void, it would have no impact on the enforceability of the reformed deed of trust as it presently exists. Rather, it would mean the deed of trust, which originally encumbered the entire 5.5 acre legal parcel, was never reformed by the 2009 judgment, and thus it continues to exist as an encumbrance on the entire 5.5 acre parcel. That result would be consistent with the trial court's declaration that the deed of trust "now covers the entire 5.5 acre property." We therefore reject HST's contention that it is entitled to relief on this basis.

4. *HST's Other Justifications for Reversing the Declaratory Judgment*

HST contends the court's declaration that the deed of trust encumbers the entire 5.5 acre legal parcel is erroneous for several other reasons as well. First, it argues the declaration "impermissibly 'reforms' [Nationstar's] lien to create an expanded, nonconsensual lien in direct conflict with the parties' intent, as determined in the 2009 Judgment."

HST's effort to focus on the parties' intent in 2009 ignores the significant change in circumstances following the 2009 judgment. HST voluntarily chose to purchase the 2.2 acre fragment out of the original owners' bankruptcy, with full knowledge that it was encumbered by the lien created by the deed of trust. As alleged in

its FAC, HST did so with the specific intent to "cure the 'ownership' element of the Subdivision Map Act problem" and to reunify the two illegal fragments into a single legal parcel.

Those facts demonstrate HST consented to the existence of the lien when it purchased the 2.2 acre fragment, even if it was not the party that applied for the loan originally secured by that lien. Both the validity of that lien and the exact amount of the obligation secured by it were explicitly confirmed in the 2009 judgment, to which HST was a party. There could be no confusion as to those issues. And the existence of the lien was obviously factored into the modest $25,000 price HST paid to acquire the 2.2 acre fragment—which includes a home in Laguna Beach. We therefore reject any suggestion it would be inequitable to hold HST responsible for satisfying the lien.

These facts also demonstrate that HST understood that its purchase of the 2.2 acre fragment would restore the unified legal parcel. As HST acknowledges in its FAC, it did not take *separate* ownership of the 2.2 acre fragment, which then continued to exist as a distinct property from the 3.3 acre fragment. To have done so would be to commit the very Map Act violation that HST claims is the reason the 2009 judgment is void. As HST acknowledges, the reason it "was the only party that could have made such a purchase lawfully" was because it was "the owner of the adjoining . . . 3.3 Acre Fragment." Thus the transaction meant "the unlawfully 'broken' Property [was] restored and put together under HST's sole ownership by the Bankruptcy Court." As such, HST implicitly consented to the fact the lien would thereafter encumber the entire unified parcel. The property cannot be one unified parcel and at the same time remain separate for purposes of encumbrances.[5]

[5] We also reject HST's assertion that the judgment must be reversed because the court had no authority to alter the "valid provisions of the 2009 Judgment barring [Nationstar's] encumbrance of the 3.3 Acre Fragment." It was HST's unification of the property that altered the effect of the encumbrance; the court's declaratory judgment recognized that alteration.

Even if we assume HST did not intend to reunify the two fragments, as stated in its FAC, and expected instead to preserve the illegal division of the two fragments, we cannot see how HST would be aggrieved by the court's declaratory judgment. According to HST's FAC, its primary lament is that as a consequence of the unsettled lien it has been unable to "market or sell the Property, resulting in substantial damages and inequitable harm to HST."

However, as we have already explained—and as HST itself has asserted repeatedly in its FAC and appellate briefs—the Map Act prohibits HST from selling, leasing, financing or developing either of the two illegal property fragments separately. Therefore, as a practical matter—and through no fault of Nationstar—HST is precluded from realizing any value from either fragment unless they are unified. And once they are, the effect of Nationstar's lien would be the same whether it is viewed as encumbering the entire unified parcel or only the 2.2 acre fragment. In either case, the lien would have to be accommodated as part of any contemplated sale or financing of the single parcel.

HST contends the court's declaratory judgment is erroneous because it failed to recognize that Nationstar's lien became unenforceable "as a result of 'loss of security' sanctions under Code of Civil Procedure section 726(a)." According to HST, Nationstar was obligated to "complete[] a foreclosure sale to exhaust their security" and rather than doing so, they chose instead to "embark[] on a multi-year long strategy of deliberate nonfeasance, using their lien to cloud title of the [e]ntire 5.5 Acre Property." We disagree.

The authorities cited by HST rely on the "one form of action" rule, which establishes that "[a] secured creditor can bring only one lawsuit to enforce its security interest and collect its debt," and "where the creditor sues on the obligation and seeks a personal money judgment against the debtor without seeking therein foreclosure of such mortgage or deed of trust, he makes an election of remedies, electing the single remedy of a personal action, and thereby waives his right to foreclose on the security or to sell the

security under a power of sale." (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 997.) In this case, Nationstar's predecessor brought only one lawsuit against the original debtors, seeking judicial foreclosure of the deed of trust, which culminated in the 2009 judgment declaring it was entitled to that relief. Its inaction in the wake of that 2009 foreclosure judgment is not a violation of the "one form of action" rule.

We reject HST's assertion that Nationstar's predecessor would have violated the one form of action rule when it sought a partition sale of the entire 5.5 acre parcel in the original debtors' bankruptcy proceeding. As Nationstar points out, its predecessor did not affirmatively petition for a partition sale as a means of collecting the debt owed by the original property owners. Instead, it referenced the option of a partition sale as part of its opposition to the trustee's motion to sell the 2.2 acre fragment to HST.

Finally, we reject HST's assertion that Nationstar would have forfeited its security interest in the 2.2 acre fragment by later filing the 2014 notice of default that "target[ed] *non-collateral* property—i.e. HST's 3.3 Acre Fragment . . . ." In making this argument, HST relies on *Walker v. Community Bank* (1974) 10 Cal.3d 729 (*Walker*). HST's reliance is misplaced. In *Walker*, the Supreme Court concluded that when a loan is secured by two separate assets, the creditor's lawsuit foreclosing on only one of those two assets operates as a waiver of its right to later foreclose on the other. *Walker* does not support the reciprocal proposition, i.e., that a creditor waives its initial decree of foreclosure on one asset by later attempting to foreclose on a different asset.

Under the one form of action rule, a creditor is limited to the relief sought in its first action—that first action represents the creditor's "election of remedies." (*Security Pacific National Bank v. Wozab*, *supra*, 51 Cal.3d. at p. 997.) In this case, that first action was the foreclosure of the security interest in the 2.2 acre fragment. It would bar any subsequent remedy sought by Nationstar to enforce a different form of security that would arguably be foreclosed under the rule. We conclude HST is not entitled to a

reversal of the declaratory relief judgment on the basis that Nationstar lost its security interest under the one form of action rule.[6]

5. *Summary Adjudication of Cause of Action for Slander of Title*

The trial court granted summary adjudication of HST's slander of title cause of action on the ground there was no triable issue of fact on the question of whether Nationstar was acting maliciously when it recorded the 2014 notice of default against the entire 5.5 acre property.

A cause of action for slander of title has four elements: "(1) a publication, (2) which is without privilege or justification, (3) which is false, and (4) which causes direct and immediate pecuniary loss." (*Manhattan Loft, LLC v. Mercury Liquors, Inc*. (2009) 173 Cal.App.4th 1040, 1051.) However, one of the potentially applicable privileges here is the "common interest privilege" found in Civil Code section 47, subdivision (c). (*Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 343 (*Kachlon*).) In the absence of evidence that the notice of default was published with malice, there is no liability. In this context, "malice" means "'the publication was motivated by hatred or ill will towards the plaintiff *or* by a showing that the defendant lacked reasonable grounds for belief in the truth of the publication and therefore acted in reckless disregard of the plaintiff's rights.'" (*Sanborn v. Chronicle Pub. Co*. (1976) 18 Cal.3d 406, 413.)

HST claims the trial court's ruling was erroneous because Nationstar had constructive notice of the 2009 judgment, restricting its encumbrance to the 2.2 acre fragment of the property, and "[c]onstructive notice 'is the equivalent of *actual*

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[6] Nationstar suggests this court should also strike out the "Reversion Provision" of the 2009 judgment because it is moot in the absence of a potential Map Act violation. But Nationstar did not cross-appeal from the judgment, and thus it cannot request affirmative relief in the form of seeking additional revisions to the judgment. If, as Nationstar contends, the existing reversion provision is now moot, no party will suffer from it.

knowledge'" (quoting *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 355 (*Citizens*)). Thus, HST contends Nationstar must be viewed as having filed the notice of default with actual knowledge that it was improper.

We cannot agree. In *Citizens,* the Supreme Court equated constructive knowledge with actual knowledge for purposes of assessing whether CC&R's recorded in a property's chain of title were binding on subsequent purchasers. That issue is not before us since Nationstar does not contest that the documents in the property's chain of title were binding. In this case, the question is whether Nationstar's recording of the notice of default was done with reckless disregard for HST's rights. In that context, constructive notice—i.e., the knowledge which would presumptively have been gained by a party if sufficient inquiry had been made by that party—is not the equivalent of actual knowledge. As *Kachlon* explains, "'[M]ere negligence in making "a sufficient inquiry into the facts on which the statement was based" does [not], of itself, relinquish the privilege."' (*Kachlon, supra,* 168 Cal.App.4th at p. 344.)

"'The usual meaning assigned to "wilful," "wanton" or "reckless," according to taste as to the word used, is that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow.'" (*Morgan v. Southern Pacific Trans. Co*. (1974) 37 Cal.App.3d 1006, 1011.) There is no evidence that the complicated state of HST's property ownership—although likely discoverable by Nationstar as successor in interest to the original lender—was actually known by Nationstar when it filed the 2014 notice of default. We find no error in the trial court's grant of summary adjudication.

6. *Summary Adjudication of Cause of Action for Unfair Business Practices*

HST's final claim is that the trial court erred by granting summary adjudication of its cause of action for unfair business practices. Once again we disagree.

As HST acknowledges, its cause of action rests entirely on its other assertions of wrongful conduct—i.e., that the "reformed lien under the 2009 Judgment is illegal and void under the Map Act," and Nationstar misused the illegal lien to "effect a multi-year title-blocking scheme . . . in an effort to strong-arm a non-debtor into paying someone else's debt . . . ." We have already rejected those assertions.

DISPOSITION

The judgment is affirmed. Nationstar is to recover its costs on appeal.

GOETHALS, J.

WE CONCUR:

ARONSON, ACTING P. J.

THOMPSON, J.